

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Meeting
Thursday 17 March 2022**

Virtual Meeting

Name of registrant: Mr Gordon Robert Hunter Kerr

NMC PIN: 9715674E

Part(s) of the register: Registered Nurse - Learning Disabilities
(November 2000)

Area of registered address: West Lothian

Type of case: Fraudulent/Incorrect entry

Panel members: Mahjabeen Agha (Chair, Lay member)
Christopher Taylor (Registrant member)
Angela Williams (Lay member)

Legal Assessor: Andrew Reid

Hearings Coordinator: Jasmin Sandhu

Facts: **Charges 1 and 2 proved and panel determined that the entry on the register was incorrectly made and fraudulently procured**

Direction: **The panel directs the Registrar to remove Mr Kerr's entry from the register in accordance with Article 26(7)**

Interim Order: **Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel had sight of the Notice of Meeting letter which was sent to Mr Kerr's registered email address by secure encrypted email on 26 January 2022.

The panel noted that the Notice of Meeting provided details of the allegations and that the meeting would take place on or after 2 March 2022. It also noted that the main bundle for this meeting was attached to this email. Further, the Notice informed Mr Kerr that if he wished to provide a written response, he should do so no later than 1 March 2022.

The panel accepted the advice of the legal assessor who referred it to Rule 5(5)(b).

The panel bore in mind that under the amendments made to The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ('the Rules') during the COVID-19 emergency period, notice of a hearing or meeting can be sent to an email address held for the registrant on the register, or an email address the registrant has notified the Nursing and Midwifery Council (NMC) of for the purposes of communication.

In light of the information available, the panel was satisfied that notice of this meeting has been served in compliance and accordance with Rules 5 and 34 of the Rules.

Details of charge

'That you

- 1. On your online application for revalidation dated 31 August 2021, stated that you had a reflective discussion with colleague A on 21 August 2021 when no such reflective discussion had taken place.*
- 2. On your online application for revalidation dated 31 August 2021, stated that you had received confirmation on 21 August 2021 from colleague A when you had not received such confirmation.*

And thereby an entry on sub part 1 of the NMC register in the name of Mr Gordon Robert Hunter Kerr, NMC PIN 9715674E was fraudulently procured and/or incorrectly made'

Background

The NMC received a referral on 17 September 2021 from the Rotherham Doncaster and South Humber NHS Foundation Trust (the Trust) in respect of Mr Kerr. At the time of the concerns raised in the referral, Mr Kerr was employed as a staff nurse at the Amber Lodge Low Secure Unit (the Ward).

On 5 July 2021, Mr Kerr was sent a revalidation expiry reminder email from his line manager on the Ward, Ms 1.

It is alleged that in his online revalidation application dated 31 August 2021, Mr Kerr stated that he had a reflective discussion with Colleague A on 21 August 2021 when this was not true. It is further alleged that on this application, Mr Kerr stated that he had confirmation from Colleague A when this was also not the case. Mr Kerr allegedly used Colleague A's NMC PIN to do this.

On 31 August 2021, Colleague A received an email from the NMC stating that she was the person who Mr Kerr named to confirm that he had met the revalidation requirements. Colleague A then forwarded this email onto Ms 1 who got in touch with HR. HR advised Ms 1 to speak with Mr Kerr to find out what happened.

When Mr Kerr came on shift on 10 September 2021, Ms 1 asked him about his revalidation. He allegedly stated that he had gone to a friend of his and completed his revalidation with them. Later that shift, Ms 1 asked Mr Kerr to bring in his revalidation documents.

That evening on 10 September 2021, Ms 1 received a Facebook message from Mr Kerr stating that he needed to be suspended as he had lied about his revalidation.

Decision and reasons on the facts

In reaching its decisions on the facts, the panel considered all the documentary evidence adduced in this case. This included the witness statement of Colleague A dated 10 December 2021, the witness statement and exhibits of Ms 1 dated 10 January 2022, emails from Mr Kerr to the NMC dated 8 December 2021 and 25 January 2022, as well as the NMC's Revalidation Guidance.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities.

The panel made the following findings in relation to the charges:

Charge 1

That you,

1. On your online application for revalidation dated 31 August 2021, stated that you had a reflective discussion with colleague A on 21 August 2021 when no such reflective discussion had taken place.

This charge is found proved.

In reaching this decision, the panel had regard to Mr Kerr's statement (as contained in an email to Ms 1 dated 12 September 2021 where he admits that he used false information in his online revalidation application. The panel also took into account the witness statement from Colleague A, whose account confirms that no revalidation discussion took place with Mr Kerr:

'I have not had any reflective discussion with Gordon and I haven't signed any confirmation form.'

On the basis of the above and on the balance of probabilities, the panel concluded that this charge is found proved.

Charge 2

2. On your online application for revalidation dated 31 August 2021, stated that you had received confirmation on 21 August 2021 from colleague A when you had not received such confirmation.

This charge is found proved.

In reaching this decision, the panel again took account of Mr Kerr's admissions as contained in his statement dated 12 September 2021. Mr Kerr admits that he made a '*false declaration*' and used Colleague A's details in an attempt to revalidate. This is supported by the statement from Colleague A who confirms that she had not signed any confirmation form:

'I have not had any reflective discussion with Gordon and I haven't signed any confirmation form.'

The panel also had regard to the evidence provided by Ms 1 which was consistent with the account from Colleague A. This included a statement from Ms 1 to the HR department dated 5 July 2021.

On the basis of the evidence from both Ms 1 and Colleague A, together with the admission from Mr Kerr, the panel concluded that this charge is proved on the balance of probabilities.

Entry onto register

The panel next went on to consider whether Mr Kerr's entry on the NMC register was made fraudulently procured and/or incorrectly made.

The panel accepted the advice of the legal assessor, who referred the panel to the test for dishonesty set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.

In all the circumstances, the panel considered that the false information contained in Mr Kerr's online revalidation application was not a mistake by him. The panel was of the view that Mr Kerr had full knowledge that he did not have confirmation from and a reflective discussion with Colleague A. Mr Kerr later admitted that the information on his application was false and that what he had done was wrong. The panel considered that such action was done with a deliberate intention to mislead the Registrar and that such conduct was dishonest (applying the standards of ordinary decent people). The panel therefore concluded that Mr Kerr's entry on the register was both incorrectly made and fraudulently procured.

Decision and reasons on direction

Having determined that Mr Kerr's entry onto the NMC register was incorrectly made and fraudulently procured, the panel went on to decide what direction, if any, to make under Article 26(7) of the 'Nursing and Midwifery Order 2001' (the Order).

Article 26(7) states:

'...If the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.'

The panel heard and accepted the advice of the legal assessor who referred it to the NMC guidance on available orders for fraudulent or incorrect entry. This sets out that an Investigating Committee may decide to take no action or direct the Registrar to amend the entry where:

- the entry was incorrect
- there was no fraud or dishonesty, and
- there is no issue over any of the registration requirements that needs the specialist judgement of the Registrar.

The panel first considered whether to take no action. It was the view of the panel that the error made in the revalidation application was not *'trivial or unimportant'*. The panel considered that this was a deliberate attempt by Mr Kerr to mislead the Registrar by providing information which he knew was false. Having found that Mr Kerr's entry on the NMC register was both incorrectly made and fraudulently procured, the panel determined that it would be inappropriate to take no action.

The panel next considered whether to direct that the Registrar amend the entry. It noted that this case relates to a wider concern regarding the integrity of the entry and not to an annotation made in error. Given its finding that the entry on the register was fraudulently procured, the panel determined that it would be inappropriate to amend the entry.

In all the circumstances the panel decided that the only appropriate order is to direct the Registrar to remove Mr Kerr's entry from the register. The panel was of the view that the act of fraudulently procuring an entry on the register was a dishonest one, which is something that members of the public would be concerned to hear about. The panel considered that it was in the public interest to protect the integrity of the register, and to maintain confidence in the nursing profession and in the NMC as a regulator.

Mr Kerr will be notified of the panel's decision in writing. Mr Kerr has the right to appeal the decision under Article 38 of the Order. This order cannot take effect until the end of the 28-day appeal period or, if an appeal is made, before the appeal has been concluded.

Decision and reasons on interim order

Having directed that the Registrar remove Mr Kerr's entry from the register, the panel then considered whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

The panel heard and accepted the advice of the legal assessor,

In reaching its decision on whether to impose an interim order, the panel had regard to the reasons set out in its decision on the facts and its decision to direct the Registrar to remove Mr Kerr's entry from the Register. It noted that the imposition of an interim order is

not an automatic outcome but is a matter for the panel's discretion in the circumstances of the case, having regard to the public interest in maintaining the integrity of the register. The panel also took into account Article 31 of the Order and the NMC's Guidance on interim orders.

The panel first considered whether to impose an interim conditions of practice order. It bore in mind its previous finding that Mr Kerr acted dishonestly and its direction to remove Mr Kerr's entry from the register. In these circumstances, the panel determined that an interim conditions of practice order would be inconsistent with its previous decisions and therefore not appropriate.

Accordingly, the panel determined that an interim suspension order would be the appropriate and proportionate order. It considered that although Mr Kerr is not currently working, if an interim suspension order were not made, there would be nothing to prevent him from practising during this appeal period. The panel therefore decided that an interim suspension order was necessary to protect the public. The panel also determined that an interim suspension order was in the public interest to protect the integrity of the register and the reputation of the profession and the NMC as its regulator.

The period of this interim suspension order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will lapse upon the removal of Mr Kerr's entry on the Register 28 days after he is sent the decision of this hearing in writing.

That concludes this determination.